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Collection of Use Taxes

Unlicensed Foreign Corporations—Traveling Salesmen

In *General Trading Company v. State Tax Commission*, 64 S. Ct. 1028, 1030, decided by the Supreme Court of the United States, May 15, 1944, it was held that an unlicensed foreign corporation, merely having in Iowa traveling salesmen sent into the state, who solicited orders subject to acceptance in Minnesota, could be obliged to collect the Iowa use tax from the purchaser to whom the goods ordered were subsequently shipped from outside Iowa. The existing Iowa statute had required the use tax to be collected by a retailer, among others, having "any agent operating within this state" under the retailer's authority, irrespective of whether the agent was located there "permanently or temporarily, or whether such retailer or subsidiary is admitted to do business within this state."

Since this decision was rendered, comparatively few of the states which impose use taxes as a supplement to their sales taxes have taken active steps, by legislation or ruling, to apply their use taxes specifically to unlicensed foreign corporations whose activities within the state are limited to a mere solicitation of orders by traveling salesmen. Alabama, Kansas and Wyoming have done so by legislation in 1945. Alabama has made its use tax applicable to every seller engaged in making retail sales of tangible personal property for storage, use or consumption in the state who "solicits and receives purchases or orders by agent or salesman."[1] When the Kansas Compensation (Use) Tax law was re-enacted and the Wyoming Use Tax Act was amended in 1945, there was included, in each instance, phraseology similar to that contained in the Iowa statute mentioned above.[2] Nine days after the ruling of the Supreme Court of the United States in the *General Trading Company* case, the Deputy Attorney General of Wyoming had rendered an opinion to the State Board of Equalization to the effect that out-of-state firms soliciting business through traveling representatives, either residents or non-residents of Wyoming, are required to collect and remit the use tax on such sales made to residents of Wyoming.[3]

There are several states in which the principle of the *General Trading Company* case has been applied from a time prior to this decision. Since 1939, the Colorado Use Tax law has called for the collection of the tax by "every agent within this state of any retailer not maintaining an office or place of business in this state, and making sales of tangible personal property for storage, use or consumption in this state."[4] North Carolina has, since 1941, regarded its use tax as

[1] Code, 1940, Title 51, Sec. 790, as amended by H. B. 545, L. 1945.
[2] Kansas: Sec. 79-3702, as amended by Ch. 370, L. 1945; Wyoming: L. 1937, Ch. 118, Sec. 6, as amended by H. B. 55, L. 1945.
[3] Wyoming CT (Corporation Tax) Service, ¶ 7949.
[4] Colorado Statutes Annotated, 1935, Ch. 144, Sec. 36(b).

required to be collected by foreign corporations having traveling representatives in the state. Its Attorney General reiterated its position in this respect eight days after the decision in the *General Trading Company* case was handed down.[5] The State of South Dakota has had in effect from a time several years prior to this Supreme Court decision, a Use Tax Regulation which has extended the collection requirements, as in Iowa, to a retailer having "any agents operating within the state under the retailer's authority, irrespective of whether the agent is located there "permanently or temporarily" or whether the retailer is admitted to do business as a foreign corporation.[6]

[5] North Carolina CT, ¶ 78-007.
[6] Regulation UT IV, South Dakota CT, ¶ 64-415.

Domestic Corporations

California.

Corporation which had abandoned lumber business, for which it was incorporated, held not engaged in business merely by reason of holding of stock in another company; decree for dissolution affirmed. Plaintiff was a minority stockholder of defendant company, holding one-third of its capital stock. He instituted this suit, under Sec. 404(B)(1) of the Civil Code, to procure the involuntary dissolution of the corporation on the ground that it had "abandoned its business for more than one year." Defendant appealed from a decree of dissolution directed by the lower court. That court, in its findings of fact, determined that the company had abandoned its business for more than one year prior to the filing of plaintiff's complaint for dissolution; that no meetings of stockholders or directors had been held for more than one year prior to such filing and that all of the physical assets of the corporation had been sold. As a result of the sale of a portion of its assets, the company had received 401 shares of the capital stock of a company which succeeded the purchaser of these assets. This stock was the only property held by the defendant. It was not contended that the defendant corporation had engaged in or operated a logging or lumber business, the purpose for which it was incorporated, since it disposed of its milling plant, equipment and property prior to 1928. "The important issue on this appeal," observed the District Court of Appeal, Third District, California, "is the question of whether a lumber corporation which has abandoned its primary purpose of incorporation for a long period of time may be considered as maintaining its lumber business merely because it owns stock in another corporation. We think that question must be answered in the negative." The court concluded that the incidental authority given in the corporate charter to hold stock of other companies did not constitute defendant a "holding corporation" authorizing it to carry on the business or traffic in buying and selling stocks

and bonds as an occupation separate and distinct from its primary business of logging and manufacturing lumber products. A judgment for the dissolution and liquidation of the company was affirmed. *Geisendorfer v. Rainbow Mill & Lumber Co.*, 161 P. 2d 561. C. J. Luttrell and J. Everett Barr of Yreka and Carlton & Shadwell of Redding, for appellant. Roy A. Weaver of Dunsmuir, for respondent.

Delaware.

Issuance of new corporate shares upheld where improper purpose on part of directors was not established. Complainant sought a decree of cancellation of 700 shares of defendant corporation's stock issued in 1944. These shares had been issued as a result of complainant's proxy's suggestion at a prior annual stockholders' meeting that the directors call on the shareholders for further subscriptions or contributions to capital to put the balance sheet of the corporation in balance. Prior to the issuance of the 700 shares on the basis of the pre-emptive rights of the respective shareholders, complainant owned 150 shares of the company's 500 outstanding shares, defendant Waltman owned 10 shares and the remaining 340 shares were owned by residents of France, and for these 340 shares Waltman held proxies to vote them at shareholders' meetings. After the filing of a second application, the Treasury Department granted permission for the issuance of the 700 shares, of which 224 were offered to complainant and defendant Waltman and the remaining 476 shares and the proceeds of their sale were held in blocked accounts until such time as communication with the French shareholders might become lawful. The Court of Chancery found that complainant had failed to make out a case of "improper purpose" in the issuance of the shares, remarking: "The most that can be reasonably inferred from anything upon which complainant relies to show an improper purpose is that the directors wished to remain in control, and that they realized that their own wishes might be fulfilled by granting complainant's wish for the elimination of the deficit by the issuance of new shares. That is certainly not a showing of improper purpose. There is no equity in complainant's case and the bill should be dismissed." *Aldridge v. Franco-Wyoming Securities Corporation et al.*, 42 A. 2d 879. Aaron Finger of Richards, Layton & Finger of Wilmington and Richard J. Cronan of Kaufman & Cronan of New York City, for complainant. Clarence A. Southerland of Southerland, Berl & Potter of Wilmington, for defendants.

Minnesota.

Where property of corporation whose charter had expired without renewal was taken over by a new corporation, stockholder had reasonable time in which to make election to receive either new shares or fair cash value of old shares. Plaintiff was a stockholder in a corporation chartered for 30 years, the charter of which expired on July 30, 1943. The directors permitted the charter to

expire without taking steps to extend or renew it. More than three months later defendant corporation was organized by all of the stockholders of the defunct corporation except plaintiff and it immediately offered to purchase all the property and assets of the old corporation, to assume the liabilities and to deliver a corresponding number of its shares to the shareholders of the old company or, in the event of a shareholder's refusal to accept the new shares, to pay the fair cash value of the old shares. All of the shareholders of the old company except plaintiff gave written consent to the sale of the property and assets to the new company. Plaintiff, who was present or represented at a stockholders' meeting at which the sale was confirmed, filed written objections to the transfer. A resolution adopted at that meeting required each stockholder to elect to receive an equal number of shares in the new company or to receive the fair cash value of his old shares. Three days later plaintiff wrote defendant expressing willingness to effect an exchange of her shares. This offer was refused by the shareholders at a meeting held about three weeks later. Plaintiff thereupon instituted suit to compel defendants to deliver the stock in the new corporation in exchange for her shares in the old company. The issue was whether plaintiff, by reason of her failure to elect to receive the new stock or the fair cash value of the old stock on the very day of the stockholders' meeting first mentioned barred her from making her election three days later. The lower court's ruling in favor of the plaintiff was affirmed by the Supreme Court of Minnesota which concluded: "Under the circumstances in the instant case, the attempt of the majority to insist upon an election forthwith by plaintiff was unlawful. Dissenting stockholders have a reasonable time in which to assert their rights against unlawful acts of the majority. They are estopped from asserting such rights only when they attempt to act after unreasonable delay." *Polans v. Orecks, Inc. et al.*, 19 N. W. 2d 435. Fryberger, Fulton & Boyle of Duluth, for appellants. James J. Courtney of Duluth, for respondent.

New York.

Section 61, General Corporation Law, requiring a stockholder instituting a derivative stockholders' action to be a stockholder at the time of transaction of which he complains, ruled not retroactive. "The motion is one brought in a derivative stockholders' action to dismiss the complaint on the ground that the plaintiff was not a stockholder at the time of the transaction of which he complains. Such a requirement was written into the amendment of Section 61 of the General Corporation Law which by its terms took effect April 10, 1944. The question presented is whether this amendment is retroactive in character." The New York Supreme Court, Special Term, Part III, New York County, determined that the section should not be held retroactive, following the ruling of the Court of Appeals in *Shielcrawt et al. v. Moffett et al.*, 294 N. Y. 180, 61 N. E. 2d 435, (The Corporation Journal, June, 1945, page 386), that Sec. 61-b was not to

be deemed retroactive in character. The motion to dismiss the complaint was accordingly denied. *Burnham et al. v. Brush et al.*, 55 N. Y. S. 2d 433. Mudge, Stern, Williams & Tucker of New York City, for defendants Bunker, Dahl, Gibson, Maynard, McLaughlin, Menden, Namm, Porter, Sargent, Shaw & Swope. Scribner & Miller and Boehm & Zeiger of New York City, for plaintiffs.

Foreign Corporations

New York.

Interest ruled recoverable by dissenting stockholder on appraised value of stock of merged Delaware corporation. Plaintiffs were stockholders of a Delaware corporation and had objected to a merger in which the defendant was the resulting or surviving corporation. As permitted by Delaware law, they had demanded that the value of their stock be appraised as of the date of the consolidation and appraisers were appointed. On January 15, 1943, the appraisers made their decision and gave notice of the values found by them. Sec. 61, Delaware Corporation Law, provides that if the value of stock so fixed by appraisers is not paid to the stockholder within sixty days after such decision and notice, the decision of the appraisers shall be evidence of the amount due from the corporation and that such amount may be collected as other debts are by law collectible from the resulting or surviving corporation. Plaintiffs brought this action to recover the appraised value of their stock and also to recover interest thereon from the date of the consolidation. Defendant's position was that as Sec. 61 of the Delaware law mentioned does not provide for interest, it followed that interest was not recoverable. The New York Supreme Court, Special Term, New York County, ruled "that the plaintiffs are entitled to recover interest on the said amounts despite the fact that Section 61 makes no provision therefor," and indicated that the interest should run from the effective date of the consolidation at the rate of six per cent. per annum. *Skipworth et al. v. Federal Water and Gas Corporation*, 56 N. Y. S. 2d 804. Kelly & Blinn (Oscar S. Blinn, of counsel), of New York City, for plaintiffs. Hughes, Hubbard & Ewing (Allen S. Hubbard, of counsel), of New York City, for defendant.

Federal District Court upheld in declining jurisdiction over suit to require payment by foreign corporation of net earnings to debenture holders. Plaintiffs, holders of Class B debentures of defendant Wisconsin company, sued in a new York federal court to recover an amount alleged to belong to them as their share of the undistributed and withheld net earnings of defendant for the years 1924 to 1943, inclusive. The United States Circuit Court of Appeals, Second Circuit, in affirming an order of the District Court of the Southern District of New York dismissing the action without prejudice to its being renewed in Wisconsin, observed: "The provision for declaration and payment of sums due annually under the debentures, as well as the long continued practice under it for the many years in question,

leave in no doubt, we think, that before any sums became due and payable under the debentures, corporate action had to be taken to fix and determine them. Instead of carrying a fixed rate of interest, the debentures promised, in lieu thereof, a contingent portion of the annual net earnings, this interest to be ascertained, fixed and declared in each year by the directors. According to the claim, the directors in each of the years but three fixed and declared, and the appellee paid the amounts determined to be due. If, therefore, support were needed for the view that the provision in the debentures, that the sums, if any, due were to be fixed and declared by the directors, meant just that, the long practice in accordance therewith and the long acquiescence of the debenture holders in that practice would provide it. The question before us is not one of jurisdiction but one of the exercise of judgment as to which would be the most convenient forum. In the circumstances this case provides, it seems quite clear to us, that in declining jurisdiction and remitting the parties to that of Wisconsin, where both corporation and directors can be sued and all matters governing the rights of the corporation and the holders of its securities can be determined under the laws of that state, the court used, it did not abuse, its discretion. Its order dismissing the action without prejudice to the right to renew it in Wisconsin is accordingly affirmed." *Williams et al. v. Green Bay & Western R. Co.*, 147 F. 2d 777. Unger & Pollack (Milton Pollack and Ludwig Mandel, of counsel), of New York City, for appellants. Cadwalader, Wickersham & Taft (Merrill M. Manning and Walter Bruchhausen, of counsel), of New York City, for appellee. *(Petition for certiorari filed in the Supreme Court of the United States, May 31, 1945; Docket No. 100. Petition for certiorari granted, October 8, 1945.)*

Taxation

California.

Property purchased in interstate commerce for shipment to Hawaii, stored in California due to war conditions awaiting shipment, held not subject to property taxes. Plaintiff, a Territory of Hawaii corporation, sought to recover property taxes, paid under protest, on property stored in San Francisco on the first Monday of March, 1943. Plaintiff had never been qualified in California and had never engaged in business there. The property taxed had been purchased in California and other states for shipment to Hawaii and was stored in San Francisco, awaiting shipment to Hawaii, the delay being occasioned by the suspension of commercial shipping to Hawaii during the war. The California Superior Court, City and County of San Francisco, decreed that plaintiff was entitled to recover, finding that the tax was levied on personal property in the course of interstate commerce between the states of the United States and the Territory of Hawaii. *The von Hamm-Young Company, Ltd. v. City and County of San Francisco*, California Superior Court, City and County of San Francisco, July 31, 1945. Brobeck, Phleger & Harrison of San Fran-

cisco, for plaintiff. Walter Dold, Chief Deputy City Attorney, of San Francisco, and John L. Nourse, Deputy Attorney General of California, for defendant. Commerce Clearing House Court Decisions Requisition No. 344814.*

* The full text of this opinion is printed in **The Corporation Tax Service, California, page 3176.**

Florida.

Invalidity of act imposing license tax on contractors on public works, because of defect with regard to substance, ruled not cured by act's subsequent incorporation in a codification of the general laws. In 1939, in *Lee, Comptroller v. Bigby Electric Co., Inc.*, 136 Fla. 305, 186 So. 505, the Supreme Court of Florida held Chapter 17178 unconstitutional, primarily because of a defect in its title, but also indicating there was invalidity in the subject matter. That Chapter provided for an annual state-wide license tax of $1,000 to be paid by anyone bidding for a fixed price "to construct within the State of Florida any public building, highway, street, sidewalk, bridge," etc., the cost of which would exceed the sum of $50,000., payment of the tax to be made to the State Comptroller prior to offering or submitting any bid on the enumerated projects. In 1939, the Legislature directed the Attorney General consolidate all general laws then in force, of a permanent nature, for submission at the following session. The 1941 Legislature adopted his compilation. In this, Chapter 17178, previously held invalid, was incorporated as Sec. 205.36. The question presented was whether that chapter "could be revivified by its incorporation in the Florida Statutes, 1941." The Supreme Court of Florida observed: "We adopt the rule that an act, the title of which is insufficient, may become valid by incorporation in a general revision of the laws whether the insufficiency has been adjudicated or not. What we have said relates only to the invalidity of Acts because of deficient titles. Incorporation in a general revision of the statutes would not cure a particular act of any constitutionality of content." Reviewing its earlier opinion in 1939, the court remarked that the act was declared unconstitutional because of substance as well as title and concluded that the invalidity of the act was still present after its reenactment in Florida Statutes of 1941. Relators were therefore ruled entitled to refund. *State ex rel. Badgett et al. v. Lee, Comptroller,* Supreme Court of Florida, July 20, 1945. Keen, Allen & O'Kelley, for relators. J. Tom Watson, Attorney General, and George M. Powell, Assistant Attorney General, for respondent. Commerce Clearing House Court Decisions Requisition No. 344936.

Michigan.

Michigan Supreme Court upholds levy of additional initial fee based upon increase in authorized shares which were unissued. In *Montgomery Ward & Co. v. Warner,* (The Corporation Journal, March, 1945, page 312), the Circuit Court for Ingham County, in Chancery,

Oh, Romeo, wherefore wert thou?

Many a corporation official has uncon-
sciously, so paraphrased Juliet-ion—a
his company has had to pay judgment b
default entered because, when a law
suit was served in some state in which qualifie
to do business, its corporate representative in tha
state was not to be found registered
address; or as he saw a just collectibl
because his company's designated representative rep
resentative in some state had left at th
designated address and the court denie
the right to maintain suit in the courts.

Such is the wind-up so often of a co
poration's employe, or one of its connec
tions, as its corporate representative qualifyin
to do business in any state.

The offices and representatives of Corporatio
Trust Company, C T Corporation System, an
associated companies, cover every territ
tory of the United States and Province o
Canada. The corporate representatives furnis
to attorneys for their corporate clients
continuous, never-interrupted service—repre
sentation that makes the risk of corporation
being left without an office or active i
the state so small as to be disre

on December 14, 1944, set aside the levy of an additional fee based upon an increase in the authorized shares of plaintiff corporation which were unissued. Upon appeal, the Michigan Supreme Court has reversed the judgment of the County Court. The higher court remarked that "the license granted plaintiff by the State of Michigan was not unequivocal, inasmuch as the statute, at the time of plaintiff's admission to do business in this State, provided it would be required to pay additional fees upon that portion of the increase of its authorized capital stock used or to be used in the State of Michigan." The court regarded *Atlantic Refining Co. v. Virginia*, 302 U. S. 22, (The Corporation Journal, January, 1938, page 88), as "determinative of the present issue." There, the Supreme Court of the United States held valid the Virginia entrance fee imposed upon foreign corporations, based upon authorized capital stock. The Michigan Supreme Court concluded that the additional fee imposed on plaintiff was neither an arbitrary taking of property beyond the power of the state nor a violation of Article 2, Section 16 of the Michigan Constitution, nor Section 1 of the Fourteenth Amendment of the Constitution of the United States. "Such fee," continued the court, "does not deny plaintiff equal protection of the laws in violation of the Fourteenth Amendment of the Constitution of the United States. Nor does it constitute a burden on interstate commerce in violation of Article 1, Section 8 of the Constitution of the United States. The fee exacted is neither excessive nor unreasonable in amount. It is limited to that part of the increase of the authorized capital used or to be used in the state of Michigan. It does not affect the interstate business of plaintiff." *Montgomery Ward & Co., Inc. v. Warner,** Michigan Supreme Court, October 10, 1945. Shields, Ballard, Jennings & Taber of Lansing (John A. Barr, Ralph G. Crandall and Henry R. Marshall of Chicago, Illinois, of counsel), for plaintiff. John R. Dethmers, Attorney General, Edmund E. Shepherd, Solicitor General, and Gregory H. Frederick and Daniel J. O'Hara, Assistant Attorney General, of Lansing, for defendant. CCH Court Decisions Requisition No. 345027; 20 N. W. 2d 92.

* The full text of this opinion is printed in **The Corporation Tax Service, Michigan, page 304.**

New York.

Receipts from stevedoring operations in New York City ruled immune from the city gross receipts tax. New York City Gross Receipts Tax Article 233, relating to "Receipts from Stevedoring Operations," provides: "Receipts from stevedoring operations carried on entirely within the territorial limits of the City of New York are to be included in the measure of the tax. No apportionment will be permitted since the measure of the tax is restricted to receipts from activities carried on exclusively within the City of New York." The Court of Appeals on July 19, 1945, ruled, without opinion, that the local laws of 1938, 1939, 1940 and 1941,

as applied to the taxing of receipts of the respondent corporations from stevedoring operations in New York City were contrary to and in violation of Article 1, Section 8, Clause 3 of the Constitution of the United States—the "interstate commerce" clause. The court affirmed the determination of the Appellate Division in annulling the imposition. The corporations had urged below that the tax was a tax upon interstate and foreign commerce and was for that reason illegal. The Appellate Division annulled the City Comptroller's determinations and directed refunds of the corporations' deposits on the authority of *Pudget Sound Co. v. Tax Commission,* 302 U. S. 90. In the Court of Appeals, the Comptroller argued that the *Pudget Sound* case had been overruled by subsequent decisions of the Supreme Court of the United States. *Carter & Weeks Stevedoring Company v. McGoldrick et al.,* 294 N. Y. 906; *John T. Clark & Son v. McGoldrick et al.,* 294 N. Y. 908. Baldwin, Todd & Lifferts (John H. Alexander and Samuel M. Lane, of counsel), for respondents. Ignatius M. Wilkinson, Corporation Counsel (Edmund B. Hennefield, Isaac C. Donner and Samuel J. Warms, of counsel), for appellants. *(Petition for certiorari filed in the Supreme Court of the United States, October 17, 1945; Docket Nos. 518-519; certiorari granted November 19, 1945.)*

Pennsylvania.

Corporation with 1,400 employees in Philadelphia and 6,000 at plant in Pennsylvania outside that city, held required to withhold city wage tax from salaries of Philadelphia residents employed at plant outside city. Defendant was a Pennsylvania corporation, occupying two buildings in Philadelphia, where it employed 1,400 persons. It deducted the Philadelphia wage tax in connection with wages paid to such employees. In addition, defendant operated a plant at Lester, Delaware County, Pennsylvania, where, among its employees, there were approximately 6,000 persons who were residents of Philadelphia and who, by reason of such residence, were subject to the provisions of the wage tax ordinance of that city. Plaintiff city sought a mandatory injunction to compel defendant to withhold and pay over to the city the tax related to the wages of the 6,000 persons employed at Lester who resided in the city. The Court of Common Pleas No. 2, Philadelphia County, after an examination of the ordinance, ruled that it was sufficiently broad to require defendant to effect the disputed withholding, observing: "The individual citizen and resident of the city is undoubtedly bound to deduct the tax whenever both he and the employee to whom he pays the wages are subject to the taxing ordinance, whether the services for which the wages are paid are performed within or without the city's limits. It is only when the wages are not taxable or the person paying them does not, because of non-residence or for other adequate reason, owe allegiance to the taxing authority that the power to impose the duty of collecting at the source does not exist." The court adopted the view that the fact that the employer chooses to keep its payrolls and pay its employees outside the city would not alter the situation. A regulation

having been amended on July 12, 1945, so as to extend the withholding in connection with salaries paid to employees resident in Philadelphia regardless of the place where the services are rendered, defendant was ordered to account for taxes upon the disputed wages on and after that date to the effective date of the decree and to continue to collect the tax at the source thereafter. It was also required to divulge to the city the names, addresses and dates of employment of, and salaries paid to all persons resident in Philadelphia employed at the Lester plant from and after January 1, 1940 to July 12, 1945 and to give other reasonably necessary information requested by plaintiff to enable it to proceed to collect taxes from the employees during that period. *City of Philadelphia v. Westinghouse Electric & Manufacturing Company,** Court of Common Pleas No. 2, Philadelphia County, September 6, 1945. Commerce Clearing House Court Decisions Requisition No. 345109.

* The full text of this opinion is printed in **The Corporation Tax Service, Pennsylvania, page 7824.**

Utah.

Federal Circuit Court of Appeals rejects suit against State to recover alleged illegal State taxes paid under protest. These were two suits brought in the United States District Court for the District of Utah to recover alleged illegal mining occupation taxes paid to the Utah State Tax Commission, which, with its individual members, constitutes the defendants in each suit. The plaintiffs prevailed in that court. Upon appeal, the Commission urged that the suits were actions against the State of Utah and that Utah had not waived its immunity from suit in the federal courts under the Eleventh Amendment to the United States Constitution. The Circuit Court of Appeals, Tenth Circuit, regarded this position as well taken. It noted that "Utah has comprehensive statutes dealing with the assessment and collection of taxes and with the right of taxpayers to challenge the collection of taxes claimed to be illegal for any reason," including, in the case of the tax under consideration, opportunity for hearings before the Commission and for application to the Utah Supreme Court by writ of certiorari for review of the decisions of the Commission. The court viewed Utah as the real defendant, and concluded that, while the state had waived immunity from suit in the state court and consented to be sued there in actions for the recovery of taxes claimed to have been illegally exacted, there was no clear declaration in the statute of the intention of Utah to submit to suit in the federal courts as would, in the absence of a decision to that effect by the Supreme Court of Utah, justify the court in giving the statute such a broad interpretation. The judgments for the plaintiffs were reversed and the causes remanded, with directions to dismiss the actions without prejudice to the filing of an action in proper courts of the State. *State Tax Commission et al. v. Kennecott Copper Corporation; State Tax Commission et al. v. Silver King Coalition Mines*

*Company,** 150 F. 2d 905. Arthur H. Nielson, Asst. Atty. General (Grover A. Giles, Attorney General, and W. L. Skanchy, State Tax Commission Attorney, on the brief), for appellants. C. C. Parsons (W. M. McCrea and A. D. Moffat and R. J. Hogan, on the brief), for appellees. Commerce Clearing House Court Decisions Requisition No. 343207. *(Petition for writ of certiorari filed in the Supreme Court of the United States, September 12, 1945; Docket Nos. 424-425.)*

* The full text of this opinion is printed in **The Corporation Tax Service**, Utah, page 2530.

Virginia.

City ordinance licensing solicitors held applicable to person soliciting orders on commission in interstate commerce. Defendant below, an individual, had solicited orders in Richmond for garments manufactured by a company in the District of Columbia. A small down payment was taken in each instance and the order then sent to the manufacturer who forwarded the garment through the United States mails, C. O. D. for the balance, to the purchaser. Defendant was not an employee of the manufacturer and her sole compensation was the commission received from the sale of each article, this commission usually being covered by the down payment. Defendant was arraigned in a City of Richmond court for violation of a city ordinance requiring those engaged in business as solicitors to obtain a permit from the Director of Public Safety upon payment of $50 and one-half of one per centum of the gross earnings, receipts, fees or commissions for the preceding license year in excess of $1,000. Defendant, who had not procured a permit, pleaded not guilty. The court found her guilty as charged and assessed her fine at five dollars. Upon appeal to the Virginia Supreme Court of Appeals, defendant contended that the court had erred in refusing to hold that the ordinance, so far as it referred to her, was in conflict with the commerce clause of the Federal Constitution. The Supreme Court of Appeals affirmed the judgment, following a rule it had previously laid down in *Dunston v. City of Norfolk*, 177 Va. 689, 15 S. E. 2d 86, "that the States have a right to require interstate commerce to bear its fair share of the cost of local government, notwithstanding the fact that the exercise of such right may, in some measure, affect the commerce or increase the cost of business." *Nippert v. City of Richmond,** 33 S. E. 2d 206. Cornelius H. Doherty, for plaintiff in error. Horace H. Edwards and Henry R. Miller, Jr., for defendant in error. *(Appeal filed in the Supreme Court of the United States, May 14, 1945. Jurisdiction noted, June 11, 1945; Docket No. 72.)*

* The full text of this opinion is printed in **The Corporation Tax Service**, Virginia, page 3825.

Appealed to the Supreme Court

The following cases previously digested in The Corporation Journal have been appealed to The Supreme Court of the United States.*

INDIANA. Docket No. 4. *Hewit v. Freeman,* 51 N. E. 2d 6. (The Corporation Journal, November, 1944, page 233.) Indiana Gross Income Tax Act—application to proceeds from sales of corporate stocks and bonds by resident owner to non-residents through brokers. **Appeal filed, March 13, 1944. Jurisdiction noted, April 3, 1944. Argued, November 8, 1944. Restored to Docket and assigned for reargument, June 18, 1945. On reargument, counsel requested to address themselves in their briefs and on oral argument to specified questions, October 8, 1945.**

NEW YORK. Docket No. 100. *Williams et al. v. Green Bay & Western R. Co.,* 147 F. 2d 777. (The Corporation Journal, December, 1945, page 47.) Corporations—jurisdiction of court over suit to require payment by foreign corporations of net earnings to debenture holders. **Petition for certiorari filed, May 31, 1945. Petition for certiorari granted, October 8, 1945.**

NEW YORK. Docket Nos. 518-519. *Carter & Weeks Stevedoring Co. v. McGoldrick et al.; John T. Clark & Son v. McGoldrick et al.,* 294 N. Y. 906, 908. (The Corporation Journal, December, 1945, page 52.) New York City business tax—applicability to stevedoring activities within city limits. **Petition for certiorari filed October 17, 1945. Certiorari granted, November 19, 1945.**

NORTH DAKOTA. Docket No. 35. *Asbury Hospital v. Cass County et al.,* 16 N. W. 2d 523, which followed ruling in *Asbury Hospital v. Cass County et al.,* 7 N. W. 2d 438. (The Corporation Journal, October, 1942, page 232.) Constitutionality of North Dakota statute prohibiting corporation farming—application to non-profit hospital corporation. **Appeal filed, February 6, 1945. Probable jurisdiction noted and case transferred to the summary docket, March 5, 1945. Argued, October 10 and 11, 1945. Affirmed, November 5, 1945.**

PENNSYLVANIA. Docket No. 40. *In re Defense Plant Corporation, (Defense Plant Corporation v. County of Beaver),* 39 A. 2d 713. (The Corporation Journal, May, 1945, page 353.) State taxation—machinery owned by government agency and attached to freehold—taxation as real property. **Appeal filed, February 24, 1945. Probable jurisdiction noted, March 26, 1945.**

UTAH. Docket Nos. 424-425. *State Tax Commission et al. v. Kennecott Copper Corporation; State Tax Commission et al. v. Silver King Coalition Mines Company,* 150 F. 2d 905. (The Corporation Journal, December, 1945, page 54.) Utah Mining Occupation tax—jurisdiction of federal court over suit to recover state occupation tax paid under protest. **Petition for certiorari filed, September 12, 1945. Certiorari granted, November 5, 1945.**

VIRGINIA. Docket No. 72. *Nippert v. City of Richmond,* 33 S. E. 2d 206. (The Corporation Journal, December, 1945, page 55.) Municipal license tax on solicitors—constitutionality of Richmond ordinance as applied to agent for manufacturer doing interstate business. **Appeal filed, May 14, 1945. Jurisdiction noted, June 11, 1945. Argued, November 5, 1945.**

WASHINGTON. Docket No. 107. *International Shoe Company v. State et al.,* 154 P. 2d 801. (The Corporation Journal, May, 1945, page 342.) Unemployment insurance—delinquency assessment—service of process on foreign corporation. **Appeal filed, June 4, 1945. Jurisdiction noted, June 18, 1945. Argued, November 14, 1945.**

WEST VIRGINIA. Docket No. 471. *Carnegie-Illinois Steel Corporation v. Alderson,* 34 S. E. 2d 737. (The Corporation Journal, October, 1945, page 15.) West Virginia business-occupation tax—taxation of manufacture of armor plate for Federal Government—private operation of Government owned plant located on Government reservation. **Petition for certiorari filed, September 29, 1945. Certiorari denied, November 5, 1945.**

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* Data compiled from **CCH U. S. Supreme Court Service, 1945-1946.**

Regulations and Rulings

NORTH DAKOTA—New regulations have recently been issued by the State Tax Commissioner in connection with the corporation and individual income taxes. (North Dakota CT, page 1057 et seq.)

OHIO—The requirements for filing a Certificate of Surrender or Dissolution of a foreign corporation include the filing of an affidavit with reference to personal property taxes, a certificate of the Franchise Division evidencing the payment of all franchise taxes and a certificate of the Bureau of Unemployment Compensation to the effect that all contributions due from such corporation as an employer have been paid, or that such corporation is not subject to contributions. Unless the Dissolution or Surrender of License is completed and filed on or before December 31, the corporation will be liable for another year's franchise tax. There will be no extension of time. (Directive of Department of State, Ohio Corporation Tax (CT) Service, ¶ .1052.)

A foreign corporation may be granted a license under the provisions of Sec. 8625-4 et seq., G. C., to transact any business in Ohio which is not forbidden to domestic corporations, notwithstanding such foreign corporation is authorized by its charter or articles of incorporation to transact in its own state business for which corporations may not be formed in Ohio. (Opinion of the Attorney General to the Secretary of State, Ohio CT, ¶ .403.)

UTAH—For franchise tax allocation purposes, sales negotiated in Utah, of stock stored in Denver and subsequently shipped to Utah, may be said to have occurred in Utah, even though the contract of sale was ratified in Denver. Sales to be allocated to Utah comprise all sales made within the state of Utah, and all sales negotiated or effected by a salesman engaged in selling principally in Utah, regardless of the location of his home office. (Memorandum from Legal Division to the Auditing Division, State Tax Commission, Utah CT, ¶ 15-004.)

VIRGINIA—Newsprint and other paper products imported from Canada and stored in a Virginia warehouse in original packages are immune from State and local taxation and there is no liability for a State or local merchants or capital tax in connection with the handling of these imported packages from the Virginia warehouse. (Letter of Department of Taxation, Virginia CT, ¶ 24-010.)

Where a corporation, either domestic or foreign, ships goods out of Virginia to its own warehouse outside the state, and the goods are sold after they reach the warehouse outside the state, receipts from the sale are not applicable to Virginia. (Letter of State Tax Commissioner, Virginia CT, ¶ 14-004.)

WISCONSIN—Notwithstanding the 1943 amendment of the Wisconsin tax law, the accrual date of Wisconsin real estate and personal property taxes, for federal income tax purposes, continues to be the date on which the tax roll is delivered to the local treasurer with the warrant for collection. Therefore, such taxes do not accrue, for such purposes, on May 1, the date under the amended law when a lien attaches upon the property against which the property taxes are assessed and levied. (Special Ruling, Wisconsin CT, ¶ 20-500.015.)

Some Important Matters for December and January

This Calendar does not purport to be a *complete* calendar of all matters requiring attention by corporations in any given state. It is a condensed calendar of the more important requirements covered by the *State Report and Tax Bulletins* of The Corporation Trust Company. Attorneys interested in being furnished with timely and complete information regarding *all* state requirements in any one or more states, including information regarding forms, practices and rulings, may obtain details from any office of The Corporation Trust Company or C T Corporation System.

ALABAMA—Annual Application Fee for permit to do business due on or before February 1.—Domestic and Foreign Corporations.

ALASKA—Annual Corporation Tax due on or before January 1.—Domestic and Foreign Corporations.

CALIFORNIA—Quarterly Retail Sales Tax Return and Payment due on or before January 15.—Domestic and Foreign Corporations.

DELAWARE—Annual Report due on or before first Tuesday in January. —Domestic Corporations.

DISTRICT OF COLUMBIA—Annual Report published and filed between January 1 and January 20.—Domestic Corporations.

Application for license in connection with District Income Tax due before January 1.—Domestic and Foreign Corporations.

GEORGIA—Annual License Tax Report due on or before January 1.—Domestic and Foreign Corporations.

INDIANA—Annual Gross Income Tax Return and Payment due on or before January 31.—Domestic and Foreign Corporations.

IOWA—Quarterly Retail Sales Tax Return and Payment due on or before January 20.—Domestic and Foreign Corporations.

KENTUCKY—Return of Withholding at the source due on or before January 31.—Domestic and Foreign Corporations.

LOUISIANA—Annual Report due February 1.—Domestic Corporations.

OHIO—Report to Department of Industrial Relations due on or before February 1.—Domestic and Foreign Corporations.

Retail Sales Tax Returns due on or before January 31.—Domestic and Foreign Corporations.

PENNSYLVANIA—Report of Unclaimed Dividends, Credits, etc., due in January.—Domestic Corporations.

SOUTH CAROLINA—Statement due January 31.—Foreign Corporations.

SOUTH DAKOTA—Quarterly Retail Sales Tax Return and Payment due on or before December 15.—Domestic and Foreign Corporations.

UNITED STATES—Fourth Instalment of Income Tax due on or before December 15.—Domestic Corporations and Foreign Corporations having an office or place of business in the United States.

VERMONT—List of Stockholders due on or before January 31.—Domestic and Foreign Corporations.

WEST VIRGINIA—Annual Gross Sales Tax Return and Payment due on or before January 30.—Domestic and Foreign Corporations.

WISCONSIN—Privilege Dividend Tax. Return due on or before January 31.—Domestic and Foreign Corporations.

The Corporation Trust Company's Supplementary Literature

In connection with its various activities The Corporation Trust Company publishes the following supplemental pamphlets, any of which will be sent without charge to readers of The Journal. Address The Corporation Trust Company, 120 Broadway, New York, 5, N. Y.

Amendments to Delaware Corporation Law, 1945. Contains complete text of the amendments adopted at the 1945 session of the legislature, giving for each one a brief explanation of its purpose and effect.

What Constitutes Doing Business. (Revised to October 1, 1943.) A 181-page book containing brief digests of decisions selected from those in the various states as indicating what is construed in each state as "doing business."

Contracts You Can't Enforce. Interesting case-histories which show advisability of contractor getting lawyer's advice before undertaking construction work outside his home state, even for federal government.

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Spot Stocks—and Interstate Commerce. Treats, in a general and informal way, of the relation between the carrying of goods in warehouses in outside states and the statutory obligations which that activity, in some states, places on the corporation owning the goods.

We've Always Got Along This Way. A 24-page pamphlet of cases in various states in which corporation officials who had thought they were getting along very well with statutory representation by a business employe suddenly found themselves in trouble.

What! *We* Need a Transfer Agent? *Nonsense!* The foregoing is the title of a pamphlet which describes in detail, with many illustrations, the exact steps through which a stock certificate goes in being transferred from one owner to another by an experienced transfer agent.

Judgment by Default. Gives the gist of Rarden v. Baker and similar cases, showing how corporations qualified as foreign in any state and utilizing their business employes as statutory representatives are sometimes left defenseless in personal damage and other suits.

THE CORPORATION TRUST COMPANY
120 BROADWAY, NEW YORK 5, N. Y.

THE CORPORATION JOURNAL

The Corporation Journal is published by The Corporation Trust Company monthly, except in July, August, and September. Its purpose is to provide, in systematic and convenient form, brief digests of significant current decisions of the courts, and the more important regulations, rulings or opinions of official bodies, which have a bearing on the organization, maintenance, conduct, regulation, or taxation of business corporations. It will be mailed regularly, postpaid and without charge, to lawyers, accountants, corporation officials, and others interested in corporation matters, upon written request to any of the company's offices.

When it is desired to preserve The Journal in a permanent file, a special and very convenient form of binder will be furnished at cost ($1.50).

[*While no more binders are at present available, their production will be resumed as soon after the war as possible.*]